

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CHRISTOPHER LAWRENCE ATHEY,

Plaintiff,

v.

THOMAS KILLMAN, ET AL.,

Defendants.

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Case No. 6:17-CV-594-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Christopher Lawrence Athey, an inmate proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On December 2, 2019, Judge Mitchell issued a Report and Recommendation (Docket No. 108), recommending that Plaintiff's claims against Defendant Robert Peritt be dismissed for failure to effect service of process. *Id.* at 1–2. A return receipt indicating delivery to Plaintiff was received by the Clerk on December 27, 2019. Docket No. 111.

This Court reviews the findings and conclusions of the Magistrate Judge *de novo* only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a *de novo* review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge's findings


for clear error or abuse of discretion and reviews her legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and Recommendation, the Court adopts the Report and Recommendation of the United States Magistrate Judge (Docket No. 108) as the findings of this Court.

Accordingly, it is hereby **ORDERED** that the Magistrate Judge's Report (Docket No. 108) be **ADOPTED**. It is further

ORDERED that the claims against Defendant Robert Peritt are **DISMISSED WITHOUT PREJUDICE**. Peritt is **DISMISSED** as a Party to the lawsuit. This dismissal shall have no effect upon the remaining claims and Parties in the lawsuit.

So **ORDERED** and **SIGNED** this **30th** day of **March, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE